IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 843 of 2005

M/s.Galaxy Corporation .. Appellant

versus

Asstt. Municipal Commissioner & ors... Respondents

...

Mr.R.S. Mishra for the appellant.

Mr.R.A. Madankar for the respondents

CORAM : B.H. MARLLAPALLE,J

DATED : 26th August 2005.

P.C.:

1. Heard Shri Mishra, the learned counsel for the appellant plaintiff who has instituted L.C. Suit no.5247 of 2002. In the said suit, he has challenged the notice dated 5th September 2002 issued by the respondent u/s.53(1) of the Maharashtra Regional and Town Planning Act 1966. By the said notice, the plaintiff builder was called upon to demolish the 9th floor for the reasons that it was unauthorised and

was beyond the permission granted for construction. Notice of Motion No. 3807 of 2002 which was taken out for injunction pending the suit has been dismissed by the Learned Judge of the City Civil Court, Mumbai vide impugned order dated 8th July 2005. It is stated by the learned counsel that during the pendency of the Notice of Motion, the impugned notice was stayed by way of ad-interim relief and the protection granted has been continued even till today.

2. In the impugned order, the trial Court has noted that it does not have the jurisdiction to entertain and try the suit challenging the notice issued u/s.53(1) of the MRTP Act on account of the bar provided u/s.149 of the said Act. Section 149 of the MRTP Act reads as under:-

149. Finality of orders.

"Save as otherwise expressly provided in this Act, every order passed or direction issued by the State Government or order passed or notice issued by any Regional

> Board, Planning Authority or Development Authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings"

3. The learned counsel for the appellant refers to a decision in the case of Raja Bahadur Motilal Puna Mills Ltd. & Anr. Vs. State of Maharashtra & Ors. reported in 2002(4) All.M.R. 429. In the said decision, this Court held that a suit or legal proceeding for quashing a deemed permission u/s.45(5) is maintainable and it does not bar any suit whereby a party to it can be prevented from acting on an action and order made under the Act.

4. The language of section 149 of the MRTP Act is clear and unambiguous. For the present purpose, the said section could be read as:

> "Save as otherwise expressly provided in this order, every order passed or notice issued by any Planning Authority or Development Authority under this

> Act shall be final and shall not be questioned in any suit or other legal proceedings."

The impugned notice has been issued u/s.53(1) of the MRTP Act and therefore, the view taken by the trial Court cannot be faulted with.

5. The learned counsel for the appellant sought leave to take out appropriate proceeding and prayed for protection for a short period. This has been opposed by the learned counsel for the respondent corporation who has invited my attention to the letter dated 26th July 2002 addressed by plaintiff’s architect to the respondent corporation. This letter prima facie shows that the building constructed was approved for ground plus six floors and commencement certificate is granted for ground plus 3 upper floors as per Phase I of the approved phase programme. As on the date, this letter was addressed, the building was constructed upto ground plus 7 upper floors and it was indicated that approval upto 7th floor was needed by regularising the same on imposing penalty charges as per the normal policy of the Corporation published under DCR 1991. It was further stated that

the 8th and 9th floors presently used as office were to be demolished. On the face of this letter dated 26th July 2002, the protection prayed for cannot be entertained.

6. The appeal fails at the threshold and the same is hereby dismissed in limine. This order will not preclude the appellant from challenging the notice u/s.53(1) of the MRTP Act 1966 in appropriate proceedings by following the due process of law.

7. Certified copy is expedited.

B.H. MARLAPALLE, J